

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

UNITED STATES OF AMERICA, }
Plaintiff, } Case No. 22 CR 158
-vs- }
CHARLES TAYLOR, } Chicago, Illinois
Defendant. } November 17, 2023
9:06 a.m.

TRANSCRIPT OF PROCEEDINGS - RULING
BEFORE THE HONORABLE MARTHA M. PACOLD

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PROCEEDINGS REPORTED BY CERTIFIED STENOGRAPHER
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1 (Proceedings heard in open court:)

2 THE CLERK: 22 CR 158, United States versus Charles
3 Taylor. If you can state your name for the record, we'll
4 start with government counsel.

09:06:25 5 MR. ZENNER: Good morning. Elie Zenner on behalf of
6 the United States.

7 MR. KUTNICK: Good morning, your Honor. Joshua
8 Kutnick on behalf of Charles Taylor who's present here in
9 custody.

09:06:34 10 THE DEFENDANT: Good morning, your Honor.

11 THE COURT: Good morning, everyone.

12 We're here for a ruling on the defendant's motion to
13 quash arrest and suppress evidence, which is docket 52. If
14 you'll just bear with me one second.

09:06:52 15 And before I turn to the ruling, obviously we had the
16 evidentiary hearing on this motion last week and I am prepared
17 to give the ruling, but does anyone have any other comments or
18 updates or anything that you'd like to say before I just turn
19 to the ruling?

09:07:19 20 MR. ZENNER: Nothing from the government, your Honor.

21 MR. KUTNICK: Nothing from the defense, your Honor.

22 THE COURT: Okay. It will take me a few minutes to
23 walk through this because I'm going to -- in the interests of
24 time, I can get you a ruling faster in a format where I just
25 give the ruling from the bench, as opposed to a written ruling

09:07:58

1 with the reasoning in the written order. So I am going to do
2 a ruling from the bench, but that means that I am going to
3 give all my reasoning on the record here, which also means
4 that it's going to take some time. So if you'd like to have a
5 seat, feel free to do that.

6 I don't think it will take too terribly long, but
7 it's going to take just a little bit of time to walk through
8 the ruling and the reasoning.

09:08:18

9 Also, just in terms of clarification, as I said, I'm
10 going to give the ruling and the reasoning here from the
11 bench. I'll follow up with a minute entry that just gives the
12 bottom line, but I am not going to do a written order with all
13 the reasoning, but, again, I am going to give all the
14 reasoning here today on the record.

09:08:35

15 Okay. So I am going to -- just to give the bottom
16 line up front, I am going to deny the motion and for the
17 reasons I'll explain. I've concluded that the police officers
18 had reasonable suspicion of criminal activity justifying their
19 investigative *Terry* stop and they had probable cause to arrest
20 the defendant.

09:09:01

21 Beginning with the legal standards, the Fourth
22 Amendment protects individuals from unreasonable searches and
23 seizures. And then there's a couple different legal standards
24 that are relevant here. One is the legal standard for a
25 motion to quash.

1 In general, "when police conduct an unreasonable
2 search or seizure, the exclusionary rule usually vindicates
3 the Fourth Amendment's protections by kicking out the
4 unlawfully obtained evidence." *United States v. Stone*, 636
09:09:43 F.3d 845, 848 (7th Cir. 2011). "Evidence which is obtained as
5 a result of an illegal arrest is fruit of the poisonous tree
6 and it must be excluded unless the government can show that it
7 was obtained as a result not of the illegality, but rather by
8 means sufficiently distinguishable to be purged of the primary
9 taint." *Id.*, and I'm going to omit the citation and internal
09:10:06 10 quotation marks.
11

12 So that's the legal standard for a motion to quash.
13 There's a separate legal standard for a valid investigatory
14 stop, and let me just walk through that standard now.

09:10:29 15 The Fourth Amendment permits an officer to initiate a
16 brief investigative stop when the officer has a particularized
17 and objective basis for suspecting the particular person
18 stopped of criminal activity. *Kansas v. Glover*, 140 S. Ct.
19 1183, 1187 (2020).

09:10:48 20 The question of reasonable suspicion is assessed
21 based on the totality of the circumstances. *Navarette v.*
22 *California*, 572 U.S. 393, 397 (2014).

23 Although a mere hunch does not create reasonable
24 suspicion, the level of suspicion the standard requires is
09:11:04 25 considerably less than proof of wrongdoing by a preponderance

1 of the evidence, and obviously less than is necessary for
2 probable cause. *Id.*

3 Turning to the application of those standards here,
4 my first conclusion is that the officers conducted a valid
09:11:24 5 *Terry* stop. The officers had reasonable suspicion to justify
6 their brief investigation of Taylor. Under *United States v.*
7 *Ruiz*, 785 F.3d 1134 (7th Cir. 2015), the officers initiating
8 the investigatory stop must be able to point to specific and
9 articulable facts which, taken together with rational
09:11:53 10 inferences from those facts, suggests criminal activity.
11 Again, that's from *Ruiz* at 1141, 785 F.3d at 1141.

12 Here the officers reported to the scene after a
13 Mariano's loss prevention employee called the police reporting
14 his suspicion that a particular woman in the store was
09:12:16 15 stealing liquor.

16 The woman emerged from the store, and upon seeing the
17 officers, she acted suspiciously, immediately asking if the
18 officers wanted to search her belongings and preparing to show
19 them her receipt.

09:12:29 20 Then the woman, Sylyna Ficarella, provided her name
21 to officers. After running her name through databases, first
22 over the radio and then in Officer Warniczek's squad car, the
23 officers learned that Ficarella had a previous shoplifting
24 arrest from the same location involving an individual named
09:12:52 25 Percy Walker and a black Volkswagen Jetta. The defendant,

1 Charles Taylor, was also mentioned in the police report for
2 that incident, though Taylor was not arrested as part of that
3 incident.

4 Shortly after running Ficarella's name through
5 databases and learning about the prior incident, the officers
6 saw a black Jetta car in the Mariano's parking lot which bore
7 the same license plate as the black Jetta involved in
8 Ficarella's prior arrest.

9 The Jetta, which was parked in the Mariano's lot with
10 its engine running, contained two men. Those men were later
11 identified to be Taylor and Percy Walker.

12 At the time the officers approached the vehicle,
13 Officer Warniczek asked the men which one was Percy Walker.
14 The man in the passenger's seat, who in fact was Percy Walker,
15 initially pretended not to recognize the name. Taylor,
16 meanwhile, was sitting in the driver's seat apparently
17 pretending to be asleep. Taylor continued to sit still with
18 his eyes closed even as the officers shined their flashlights
19 directly into the car and carried on a loud conversation with
20 Walker.

21 This suspicious behavior, taken together with the
22 prior arrest report describing a crime almost identical to the
23 one the Mariano's employee alleged Ficarella was attempting to
24 commit, provided the officers with reasonable suspicion that
25 the men in the vehicle may have been attempting to shoplift.

1 Next, the *Terry* stop was not prolonged beyond the
2 point where the officers' reasonable suspicion dissipated.

3 Even assuming the police officers' interaction with
4 defendant and Walker constituted a stop for Fourth Amendment
5 purposes as soon as the police approached, as opposed to
6 beginning as a voluntary interaction, it was less than five
7 minutes from the time that the officers approached the vehicle
8 until the point that defendant disobeyed police orders and
9 fled on foot. See docket 58-2, which is body-worn camera
10 footage at 21 minutes 52 seconds to 25 minutes and 2 seconds.

11 During that brief period, the officers were asking
12 basic questions about Taylor's and Walker's identities, their
13 reasons for being in the parking lot, their relationship to
14 Ficarella, and their sobriety.

15 The questions as to their sobriety were particularly
16 relevant to Taylor, who appeared to be in an exceptionally
17 deep, and likely feigned, slumber despite sitting in the
18 driver's seat of a running car.

19 Additionally, the officers spent those few minutes
20 running Walker's and Taylor's names through databases to check
21 for warrants or relevant trespass notices.

22 These actions were reasonable and appropriate means
23 of investigating that were likely to confirm or dispel
24 officers' suspicions of criminal activity. *United States v.*
25 *Adamson*, 441 F.3d 513, 521 (7th Cir. 2006); see also *United*

1 *States v. Govan*, 365 F. App'x 693, 697 (7th Cir. 2010).

2 The officers' stop permissibly continued while they
3 took these steps to investigate their reasonable suspicions.

4 And so for all those reasons, the officers conducted
5 a valid *Terry* stop.

6 Next, the officers permissibly sought to frisk Taylor
7 after learning from Officer Hartmann's personal observation
8 and Officer Warniczek's report over the radio that Taylor
9 might have a gun.

10 And so let me now give some more detail on this last
11 point.

12 First of all, in terms of the legal standard, during
13 a *Terry* stop, officers may order a driver out of his vehicle
14 and then proceed to pat him down for weapons if the officer
15 reasonably concludes that the driver might be armed and
16 presently dangerous based on specific and articulable facts.
17 *Mwangangi v. Nielsen*, 48 F.3d 816, 824 (7th Cir. 2022), and
18 I'm omitting the internal quotations.

19 Additionally, officers are entitled to take
20 reasonable steps to ensure their own safety, and therefore may
21 order a detainee to exit a vehicle and may conduct a patdown
22 search of the detainee's outer clothing. *United States v.*
23 *Hendricks*, 319 F.3d 993, 1004 (7th Cir. 2003).

24 The officers' choice to frisk Taylor was permissible
25 under this standard. At the time Officers Hartmann and Guzman

1 ordered Taylor out of the car to frisk him, Officer Hartmann
2 had spotted what he believed to be a firearm in Taylor's
3 waistband and had informed Officer Guzman of this fact.

4 The officers testified credibly and consistently that
09:18:25 5 they were then able to see what appeared to be a part of a
6 firearm protruding from Taylor's waistband after the bottom of
7 his shirt had shifted up slightly to reveal Taylor's belt
8 line.

9 Additionally, Officer Hartmann testified that at
09:18:39 10 approximately the same time he spotted the firearm, he heard
11 Officer Warniczek issue a warning over the radio that Taylor
12 might have a firearm.

13 Officer Warniczek made this report after Ficarella,
14 in an obvious state of fear and distress, informed him that
09:18:55 15 Taylor had a gun and that she was afraid Taylor would hurt or
16 kill her.

17 Here, Ficarella's report undoubtedly allowed the
18 officers to conclude based on specific and articulable facts,
19 see *Mwangangi*, 48 F.4th at 824, that Taylor might be armed and
09:19:16 20 presently dangerous.

21 At this time, the officers had specific and
22 articulable reasons to believe that Taylor had a firearm on
23 his person, and nothing suggested that the firearm was not
24 loaded or was otherwise inoperable.

25 In sum, at the time Officers Hartmann and Guzman

1 ordered Taylor out of the car to frisk him, they reasonably
2 suspected Taylor of criminal activity, had observed Taylor's
3 and Walker's abnormal, evasive behavior, had just been
4 surprised to discovering what looked to be a firearm on
09:19:54 5 Taylor's person that Taylor had not disclosed, and had just
6 been warned over the radio that Taylor might have a firearm.

7 These specific and articulable facts supported the
8 officers' reasonable conclusion that Taylor might be armed and
9 presently dangerous. The officers' decision to frisk Taylor
09:20:08 10 therefore did not violate the Fourth Amendment. See *Mwangangi*
11 48 F.4th at 824; see also *Hendricks*, 319 F.3d at 1004.

12 Turning to the next topic, probable cause had
13 developed by the time the officers arrested Taylor.

14 Beginning with the legal standard, probable cause
09:20:34 15 exists when a reasonable person, knowing all of the facts and
16 circumstances known to the officer, would believe that the
17 individual in question has committed or is committing a crime.
18 *United States v. Cherry*, 920 F.3d, 1126, 1133 (7th Cir. 2019).
19 Probable cause requires only that a probability or substantial
09:20:54 20 chance of criminal activity exists. It does not require the
21 existence of criminal activity to be more likely true than not
22 true. *Mucha v. Village of Oak Brook*, 650 F.3d 1053, 1056-57
23 (7th Cir. 2011).

24 Because Taylor did not submit to the officers'
09:21:15 25 authority, Taylor was not arrested at least until the time the

1 officers subdued him. *United States v. Griffin*, 652 F.3d 793,
2 800 (7th Cir. 2011), which says that the seizure does not
3 occur until the suspect submits to the show of authority or
4 the pursuing officer resorts to force to stop the suspect's
5 flight.

6 At that time, based on the officers' encounter with
7 Taylor, the officers had probable cause to believe Taylor had
8 committed or was committing a crime.

9 As soon as Taylor stepped out of the car, and only a
10 few minutes after the officers first approached the car,
11 Taylor took off on foot in an attempt to escape from the
12 officers.

13 As Officers Hartmann and Guzman gave chase and while
14 they were close behind Taylor, both saw Taylor reach toward
15 his waistband and drop a metal object, which they believed to
16 be a firearm.

17 Officer Hartmann stayed with the object, which turned
18 out to be a pistol, while Officer Guzman maintained his
19 pursuit of Taylor.

20 After a brief chase, Officers Guzman and Warniczek
21 caught up to Taylor, subdued him, and handcuffed him.

22 In addition to the facts already known to the police
23 officers before Taylor stepped out of the car, Taylor's choice
24 to flee from the officers was highly suggestive of wrongdoing
25 and supported probable cause. *Illinois v. Wardlow*, 528 U.S.

1 119, 124 (2000), which says, "Headlong flight, wherever it
2 occurs, is the consummate act of evasion: It is not
3 necessarily indicative of wrongdoing, but it is certainly
4 suggestive of such."

09:22:54 5 And *United States v. Wilson*, 963 F.3d 701, 704 (7th
6 Cir. 2020), which says, "Wilson's unprovoked headlong flight
7 from police in a high-crime area put any lingering doubt to
8 rest."

9 And so on this -- to summarize this last point, the
09:23:15 10 officers' arrest of Taylor was supported by probable cause.

11 And just to summarize and conclude overall, because
12 the officers' attempt to frisk Taylor and Taylor's subsequent
13 arrest were both lawful, there is no basis to suppress the
14 firearm, and the motion to quash arrest and suppress evidence,
09:23:40 15 which, again, is docket 52, is denied.

16 Okay. So that concludes the ruling on the motion.
17 Can we just discuss the schedule and how to proceed from here.

18 MR. KUTNICK: Your Honor, the defense intends to file
19 at least one motion additional, potentially two, and I would
20 ask for a status date in December for the allow -- to allow me
21 to file one or both of those motions.

22 THE COURT: Okay. And any comments from the
23 government?

24 MR. ZENNER: No. That makes sense to the government
09:24:36 25 as well.

1 THE COURT: Okay. Would you like to hold a status in
2 person, by telephone, or through a written report?

3 MR. KUTNICK: I could do it by written report, your
4 Honor.

5 THE COURT: Okay. And, sorry, would you suggest that
6 we actually set a pretrial motions deadline for the same day
7 as a written report or --

8 MR. KUTNICK: I would ask if the Court refrain from
9 setting that deadline now only because I have yet to make a
10 decision about filing both motions at the same time or one
11 subsequent to the other, so I'm still discussing that with
12 Mr. Taylor.

13 And I would just -- if you would just -- if the Court
14 would refrain from setting that deadline just yet, I think
15 that we'll be at a point to have all those in soon, and it is
16 possible for me to potentially have everything filed by
17 mid-December.

18 THE COURT: Okay. So when would make sense then
19 for -- I guess if we're now just talking about a status report
20 then, which is just for an update on the status of the case
21 and whether you're in a position to set a pretrial motions
22 deadline, when would make sense for --

23 MR. KUTNICK: I was going to ask for December 15th,
24 please.

25 THE COURT: Okay. That works fine. And, sorry, just

1 one second.

2 Okay. So please do include, as in prior status
3 reports, please just include an update on the status of the
4 case and if you are requesting any further status hearing or
09:26:43 5 any other type of hearing or trial, please let me know that
6 and also please include a summary of the defense position on
7 the status of the case, including whether the defense intends
8 to file pretrial motions and objects to the exclusion of time
9 under the Speedy Trial Act.

09:27:04 10 And is there a motion to exclude time for this next
11 period of time through the next status report?

12 MR. ZENNER: There is, your Honor. To allow for
13 defense to consult with his client and consider additional
14 pretrial motions.

09:27:22 15 THE COURT: Okay. Any objection?

16 MR. KUTNICK: No objection.

17 THE COURT: Okay. And also usually when we're
18 proceeding through a written report as opposed to a telephone
19 or in-person hearing, I'll exclude time a couple days past the
09:27:39 20 written report deadline just so I can see the report and
21 respond to it with a scheduling order.

22 So if the report is coming in on December 15th, I
23 would intend to exclude time through December 20th, which is
24 three business days after the report. Any issue with that?

09:27:58 25 MR. KUTNICK: No objection.

1 THE COURT: Okay. So I'll grant the motion to
2 exclude time, and I will exclude time through December 20,
3 2023 under 18 U.S.C. 3161(h)(7) to serve the ends of justice
4 without objection. Excluding time will allow the parties the
5 reasonable time necessary for effective preparation, which
6 includes time to continue reviewing discovery materials and
7 time to consider and prepare pretrial motions and time for the
8 government to consult internally and time for the defense to
9 consult with the client, and that delay outweighs the
10 interests of the public and the defendant in a speedy trial.

11 And then finally, if at any point anyone would prefer
12 to hold a status hearing instead of or in addition to that
13 written report, please just let me know, and I can arrange
14 that pretty promptly.

15 Okay. Is there anything else we should address at
16 this point?

17 MR. ZENNER: Nothing from the government, your Honor.

18 MR. KUTNICK: Not from the defense, your Honor.

19 Thank you, your Honor.

20 THE COURT: Thank you everyone.

21 (Which were all the proceedings heard.)
CERTIFICATE

I certify that the foregoing is a correct transcript from
the record of proceedings in the above-entitled matter.
Kathy M. Feltz, R.P.C. 2000

/s/Kathleen M. Fennell

December 3, 2023

Kathleen M. Fennell
Official Court Reporter